

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

OKEY GARRY OKPALA

PLAINTIFF

VS.

CIVIL ACTION NO. 5:15cv40-DCB-MTP

FNU VASQUEZ, ET AL.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on Magistrate Judge Michael T. Parker's Report and Recommendation (**docket entry 72**) regarding defendant Jose A. Santana's Motion to Dismiss (**docket entry 38**), and defendants Bureau of Prisons, Warden Norbal Vazquez, Darren Lacy, and Malchcolm Edwards' separate Motion to Dismiss or, in the alternative for Summary Judgment (**docket entry 54**).

The plaintiff, Okey Garry Okpala ("Okpala"), initiated this action on or about May 5, 2015. In his Complaint, Okpala alleges a violation of his constitutional rights while he was incarcerated at various federal correctional facilities. Title 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or fails to state a claim upon which relief can be granted, unless the prisoner is under imminent danger of serious physical injury.

On September 24, 2015, the Court conditionally granted Okpala in forma pauperis ("IFP") status. Although the plaintiff has

received "three strikes" under the Prison Litigation Reform Act, the Court conditionally granted his request to proceed IFP for the limited purpose of determining whether he meets the "imminent danger of serious physical injury" exception under the statute. See Amended Order of September 24, 2015. The Court also directed that summons issue to the defendants, and specifically directed the defendants to address the plaintiff's imminent danger claim, and to provide the plaintiff's medical records in their answers or responsive pleadings. See Order of September 24, 2015.

Several defendants have filed dispositive motions in this case, and have attached the plaintiff's medical records, but these motions implicate jurisdictional, immunity, and/or fact issues rather than the propriety of the plaintiff proceeding IFP. See docket entries 39 and 54. Magistrate Judge Parker scheduled a hearing on the issue of Plaintiff's IFP status, but the hearing was cancelled due to unforeseen issues which arose in transporting the plaintiff.

The threshold issue in this case is whether the plaintiff may proceed IFP. If IFP status is denied, none of the defendants' other grounds for dismissal need be addressed. Magistrate Judge Parker therefore recommends dismissal without prejudice of the motions to dismiss. Neither the plaintiff nor the defendants have filed any objections to the Report and Recommendation.

The Court shall therefore deny the defendants' motions without

prejudice. Magistrate Judge Parker has ordered briefing of the IFP issue, and the Court will await his Report and Recommendation regarding same. Accordingly,

IT IS HEREBY ORDERED that Magistrate Judge Michael T. Parker's Report and Recommendation (**docket entry 72**) is ADOPTED as the findings and conclusions of this Court;

FURTHER ORDERED that defendant Jose A. Santana's Motion to Dismiss (**docket entry 38**), is DENIED WITHOUT PREJUDICE;

FURTHER ORDERED that defendants Bureau of Prisons, Warden Norbal Vazquez, Darren Lacy, and Malchholm Edwards' separate Motion to Dismiss or, in the alternative for Summary Judgment (**docket entry 54**) is DENIED WITHOUT PREJUDICE.

SO ORDERED, this the 13th day of September, 2016

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE